UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/UKCD/99/5
8 December 1999

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Addendum

THE CROWN DEPENDENCIES OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[11 October 1999]

GE.99-46221 (E)

BAILIWICK OF JERSEY

1. This is the fifth report submitted by the States of Jersey under article 40, paragraph 1 of the Covenant. Since the fourth report, the measures listed below have been taken which are relevant to the provisions of the Covenant.

Article 2

2. On 17 November 1995, the Administrative Decisions (Review) (Amendment) (Jersey) Law 1995 was enacted. It amended the Administrative Decisions (Review) (Jersey) Law 1982 to enable review boards to be composed of persons who are not States Members. The law of 1982 provides a system of administrative appeals for those who wish to seek redress of complaints against decisions of committees, departments and officials of the States of Jersey.

3. The drafting of legislation which will render racial discrimination unlawful is under active consideration. A brief for the Law Draftsman is being prepared.

4. The States have resolved in principle to incorporate into domestic Jersey law the terms of the European Convention on Human Rights. Draft legislation in this respect (which is similar to the relevant United Kingdom provisions) is being advanced in consultation with the Home Office.

Article 3

5. As noted in the fourth periodic report, the States of Jersey have endorsed the principle that all forms of discrimination on grounds of sex, whether against women or men, should be removed. The Employment and Social Security Committee is engaged in a widespread consultation exercise with a view to considering:

(a) Whether legislation should be introduced covering sex discrimination in employment matters;

(b) Whether legislation should be introduced covering disability discrimination in employment matters;

(c) Whether legislation should be introduced covering age discrimination in employment matters;

(d) Whether other forms of discrimination should be covered, for example, on grounds of religion.

These matters are therefore under active consideration at the present time.

Article 4

6. On 31 May 1996, the Prevention of Terrorism (Jersey) Law 1996 was enacted to proscribe organizations concerned in terrorism, to give power to exclude certain persons from the island in order to prevent acts of terrorism, to make provisions for offences of providing financial assistance for terrorism, for investigations of terrorist activities and for connected and ancillary purposes. The Law of 1996 is based upon similar United Kingdom legislation.

Article 6

7. By virtue of the extension to the island of the relevant provisions of the Crime and Disorder Act 1998 and the Human Rights Act, 1998, all remaining vestiges of the death penalty (for treason, piracy and military offences) are abolished.

Article 9

8. Drafting of local legislation to clarify powers of arrest and detention on lines similar to the Police and Criminal Evidence Act 1984 of the United Kingdom is well advanced.

Article 11

9. The insular authorities have given careful consideration to the need for the retention of the reservation to article 11. Since the fourth report was prepared, the courts of Jersey have developed the law so as to make it clear that imprisonment should not be ordered for debt where the debtor is making appropriate efforts to pay in good faith or is unable to pay at all and is in good faith. This is generally consistent with the requirements of article 11.

10. Those who live in and use Jersey are well versed in the use of trusts, companies, etc., to hold their assets. It can often be the case that a debtor, although living to a high standard of living, has very few, if any, assets in his own name. The assets are all held by companies which may in turn be owned by discretionary trusts. He is able therefore to say that he does not own or have legal control of any of these assets. These are therefore assets which cannot be taken by the Viscount (the court enforcement officer) in order to enforce a judgement against the debtor, because they do not belong to the debtor.

11. In such circumstances, the risk of imprisonment is often the only means for the creditor to secure payment from somebody determined to avoid paying a debt. The insular authorities remain of the view that it would be most unfortunate if such persons were able to escape liability for debts incurred. It leads to resentment and to lack of respect for the law and the legal system if apparently wealthy individuals are able to avoid their liabilities. It is accepted that this is so in a small minority of cases, but the view has so far been taken that it would be highly undesirable if the Court did not have sufficient power to ensure payment by such persons.

12. The island has not been able to obtain definitive legal advice to the effect that the use of imprisonment for debt in such circumstances would not amount to a breach of article 11 and, accordingly, the island wishes to retain the present reservation.

Article 16

13. The States have adopted the Age of Majority (Jersey) Law 1999 which awaits Royal Sanction. The purpose of the law is to reduce the age of majority from 20 to 18 years. It follows that persons of 18 and 19 years will have the right to full recognition as a person before the law, which they do not have at the present time.

Article 18

14. On 21 November 1997, the Loi (1902) au sujet des ordres religieux étrangers was repealed. The Loi of 1902 purported to impose certain restrictions on the right of foreign persons belonging to religious orders to establish themselves in the island. The Loi was repealed as being defunct for all practical purposes.

15. The States are shortly to debate the draft Education (Jersey) Law 1999, which would make specific provision that a pupil of compulsory school age in a provided school (a school that is funded either wholly or in part by the Bailiwick of Jersey) receive religious education and attend an act of worship on at least one school day in each week during the school term, the act of worship being broadly Christian in nature, but not distinctive of any particular religious denomination. Provision would be made to safeguard the right of a parent to withdraw a pupil from religious education and acts of worship. Provision would also be made requiring the Education Committee in certain circumstances to provide premises for denominational religious instruction.

Article 20

16. As noted under article 2 above, the drafting of legislation to render racial discrimination unlawful is under active consideration. In the meantime, the insular authorities remain committed to the principles of the Convention on the Elimination of All Forms of Racial Discrimination and continue to take whatever action is deemed necessary to ensure that those principles are observed.

Article 23.2

17. One of the effects of the Age of Majority (Jersey) Law 1999 (referred to under article 16 above) when enacted will be to free persons of 18 or 19 years of age from the requirement to obtain parental consent for marriage.

Article 23.4

18. The Legislation Committee is considering draft amendments to the Separation and Maintenance Orders (Jersey) Law 1953 which would place the rights and remedies of male and female spouses under that law on an equal footing. The law is not much used because applications are generally made to the Royal Court under the Matrimonial Causes (Jersey) Law, 1949 (as amended), where the powers are much wider. The 1953 law makes provision only for maintenance payments by a husband to a wife, and not vice versa. It also confines the grounds upon which a husband can apply for a separation order more closely than for a wife.

Article 24

19. The Legislation Committee will shortly lodge the draft Affiliation (Prescription) (Jersey) Law 1999 which, in respect of illegitimate children, is intended to remove the existing prescription period of a year and a day within which the mother is required at customary law to institute proceedings for maintenance in respect of the child. This reform is intended to secure equality of treatment in this respect as between legitimate and illegitimate children. It is also intended to bring forward legislation which will put the father of an illegitimate child on an equal footing with the mother so far as custody, care and control and access are concerned.

Article 25

20. In relation to franchise generally, on 14 February 1997, the Legislation Committee appointed a franchise working party to consider whether any changes should be made to the Franchise (Jersey) Law 1968 and the Loi (1897) sur les élections publiques, or to the practice and procedure of public elections with a view to encouraging the maximum participation of the electorate in such elections and to make recommendations to the Legislation Committee. The report of the working party was presented to the States on 6 October 1998. The reforms in relation to:

(a) Franchise and residence qualifications;

(b) Provisions as to disqualification;

(c) Electoral return forms;

(d) The compilation and content of the electoral register;

(e) Public elections procedure; and

(f) Postal voting

have been approved in principle and referred to the Law Draftsman for preparation of the necessary legislation.

Article 26

21. The matters noted under articles 2 and 20 above apply in relation to article 26.

Article 27

22. As noted in relation to article 18 above, the Loi (1902) au sujet des ordres religieux étrangers has been repealed.

BAILIWICK OF GUERNSEY

23. The general framework under which the civil and political rights recognized by the Covenant are protected within the Bailiwick of Guernsey are set out in full in a paper which can be supplied to the Committee if it so wishes. The comments in Part I of the four previous reports remain valid.

Article 1

24. In Guernsey, of the 57 members of the legislature, 45 are directly elected by universal franchise. The remaining 12 members are indirectly elected: 2 representing the States of Alderney and 1 representing each of the 10 douzaines (parish councils) of the island. In Alderney, all 10 members of the legislature are directly elected by universal franchise. In Sark, 12 members of the legislature are directly elected by universal franchise. The remaining 40 members hold their seats by virtue of rights associated with the ownership of certain properties. In all three islands the system of government and method of election reflects the wish of the respective populations.

25. There are no factors or difficulties which prevent the free disposal of a person's natural wealth and resources during his lifetime. Certain restrictions apply to dispositions after death the purpose of which is to protect the rights of the surviving spouse and children. No distinction of any kind is made, except that on the island of Sark realty devolves to the eldest son. This latter provision is currently under review.

Article 2

26. Following the enactment of The Reform (Guernsey) Law, 1996 any person aged 18 years or over and not subject to any legal disability who is ordinarily resident in Guernsey throughout the two years immediately preceding 31 October of the year of application or has been so resident for a period of five years in aggregate at any time preceding that date is entitled to be inscribed on the electoral roll. No distinction of any kind, such as race, colour, sex etc. is made. Similar provisions apply in Alderney. In Sark, an alien is not entitled to vote in elections.

27. The Bailiwick authorities are currently giving consideration to the incorporation of the European Convention for the Protection of Human Rights and Fundamental Freedoms into domestic legislation. Draft enabling legislation has been submitted to the Home Office for pre-audit.

Article 3

28. The States of Guernsey remain committed to adopting appropriate measures to ensure the equality of men and women in all spheres. In November 1996 the States resolved, inter alia,

> To note the progress made since the previous report on the Convention on the Elimination of All Forms of Discrimination against Women was considered by the States on 15 December 1993;

To endorse the States Advisory and Finance Committee's intention, prior to its next report on the Convention, to carry out a detailed review in both the public and private sector to identify what measures and potential resource implications might be required to eliminate discrimination against women and to meet the aims and objectives of the Convention;

To direct the States Advisory and Finance Committee to implement a confidential service to record complaints by, and provide advice to, women who claim to have been discriminated against, and to report back to the States annually (by means of an appendix to a Billet d'Etat) with appropriate details of such service. This confidential service was launched in 1998 in association with the Guernsey Citizens' Advice Bureau.

29. The female percentage of the workforce has increased from 36 per cent (1979) to 3 per cent (1997).

30. Of the members of the States of Guernsey, 15.8 per cent are women. The comparative figures for the States of Alderney and Chief Pleas of Sark are 20 and 32 per cent respectively. Of the 75 Advocates of the Royal Court 16 (21 per cent) are women.

31. There are 2,690 boys and 2,575 girls undergoing primary education. The numbers of pupils undergoing secondary education are almost equally divided between boys and girls (1,421 and 1,430 respectively). There are 513 boys and 486 girls undergoing secondary education in the private sector. The private school for boys has boarding facilities, whereas the girls' schools do not.

32. There are 77 males and 112 females undergoing full-time education at the Guernsey College of Further Education, 398 males and 384 females are undergoing higher education off the island.

33. The Employment Protection (Guernsey) Law, 1998 provides, inter alia, that dismissal on the ground of pregnancy shall constitute unfair dismissal.

Articles 4 and 5

34. There is nothing to add to comments set out in previous reports.

Article 6

35. The infant death rate per 1,000 live births averaged 4 over the five-year period 1993-1997. Out of 593 deaths in 1997, 24 were due to violent or accidental causes, including suicide. The last case of murder in the Bailiwick occurred in 1991.

36. The Abortion (Guernsey) Law, 1997 allows recognized medical practitioners to terminate a pregnancy at the island's general hospital. It is an offence to carry out an abortion in other circumstances and persons who do so are liable to imprisonment for life. In October 1998, the

States resolved to request Her Majesty's Government to make a declaration to extend the provisions of the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms to the Bailiwick.

Articles 7 and 8

37. There is nothing to add to comments set out in previous reports.

Article 9

38. Places of detention in Guernsey are:

(a) The prison (opened in 1989);

(b) Detention cells at police station (opened in 1993);

(c) Short-term (48 hours) customs detention cells;

(d) Short-stay unit for adolescents in need of care;

(e) The mental hospital.

39. The Government's Mental Health Services provide for the treatment of a wide range of psychiatric and behavioural problems, with an open door policy prevailing. Whilst the vast majority of people attend for treatment on an informal basis, nevertheless a small number of patients considered to be a danger to themselves or others can be compulsorily detained under the Mental Treatment Law (Guernsey) 1939 (as amended). In 1998 there were 63 compulsory detentions in the Government's mental hospital, of which only 8 were for periods exceeding seven days.

40. The Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997 provides that a juvenile may not be placed in secure accommodation unless certain criteria apply.

41. In October 1997, the States resolved that an annual report should be prepared detailing the number of strip and intimate searches carried out by police and customs officers. A copy of the first report can be supplied to the Committee if it so wishes.

Articles 10 and 11

42. There is nothing to add to comments set out in previous reports.

Article 12

43. The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1998 relaxes certain restrictions on qualified residents. With regard to Alderney, the Housing (Control of Occupation and Development) (Amendment) (Alderney) Law, 1997 modifies the definition of persons who may be granted permission to construct a dwelling.

Articles 13 to 16

44. There is nothing to add to comments set out in previous reports.

Article 17

45. The Interception of Communications (Bailiwick of Guernsey) Law, 1997 provides that a person who intentionally intercepts a communication in the course of its transmission by post or by means of a public telecommunication system is guilty of an offence.

Articles 18 to 21

46. There is nothing to add to comments set out in previous reports.

Article 22

47. The comments set out in the first report continue to apply. There are no political parties in the Bailiwick, but no restrictions exist which would prevent the establishment thereof if it was so desired.

Article 23

48. The Matrimonial Causes (Amendment) (Guernsey) Law, 1997 provides that the petitioner in unopposed divorce proceedings need not attend the hearing of the petition unless the court otherwise directs.

49. The Adoption (Amendment) (Guernsey) Law, 1997 allows the States Children Board to pay allowances, in certain circumstances, to persons who have adopted, or intend to adopt, an infant pursuant to an arrangement made by the Board.

Article 24

50. The Child Protection (Amendment) (Guernsey) Law, 1997 and The Children and Young Persons (Amendment) (Guernsey) Law, 1997 provide for the application of the principal laws to the Island of Alderney.

Article 25

51. In Alderney, the term of office of States Members was increased from three years to four years by The Government of Alderney (Amendment) Law, 1996. The Government of Alderney (Amendment) Law, 1998 reduced the number of States Members from 12 to 10.

52. In Guernsey, The Reform (Amendment) (Guernsey) Law, 1998 makes provision, inter alia, for election candidates to be present at the counting of votes and for the maintenance of order at elections and also amends the provisions regarding election to parochial offices. By

virtue of The Reform (Replacement of Conseillers) (Guernsey) Law, 1998 the office of Conseiller will be abolished on 30 April 2000 and the number of People's Deputies increased from 33 to 45.

Articles 26 and 27

53. There is nothing to add to comments set out in previous reports.

ISLE OF MAN

54. The International Status of the Isle of Man has not been altered since the fourth report was made in 1995 and the comments contained in Part I of that report remain valid, with the exception of the changes to some sub-headings under Part I C, "General legal framework within which human rights are protected". Those amendments are as follows.

Legal Aid

55. The Police Powers and Procedures Act 1998 has introduced a new system under which duty advocates are available to give advice at police stations to unrepresented persons in custody or present at the police station. The service is free.

Incorporation of human rights instruments - international legislation

56. Work has begun on the preparation of legislation based on the Human Rights Act 1998 of the United Kingdom Parliament. The proposed legislation will incorporate into Isle of Man law principles similar to those contained in the Covenant. It is intended that the proposed legislation will enable courts in the Isle of Man to award compensation for a breach of the principles. The legislation is likely to be introduced in Tynwald in 1999/2000.

Equal opportunities

57. Section 51 of the Employment Act 1991 deems a dismissal on the grounds of sex or marriage to be an unfair dismissal. It is anticipated that the Employment (Sex Discrimination) Bill will be introduced into the Branches (of the legislature) in the 1998/1999 legislative session. Part I of the bill deals with equal pay and is based on the United Kingdom Equal Pay Act 1970. Part II deals with sex discrimination in employment generally and is based on Parts I and II of the United Kingdom Sex Discrimination Act 1975.

Race relations

58. Work has also begun on the preparation of legislation to modernize the law relating to the prevention of racial discrimination. The legislation is likely to be introduced in Tynwald in 1999/2000.

Articles 2 and 3

59. A race relations bill to make racial discrimination unlawful is included in the Government's current legislative programme (see above).

Articles 3 to 6

60. There have been no significant changes with regard to any of these articles.

Article 7

61. Legislation based on the United Kingdom Police and Criminal Evidence Act 1984 was enacted in the Isle of Man in January 1999.

62. The Isle of Man is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and was visited by a delegation from the European Committee in 1997 to check the island's compliance with the Convention.

Articles 8 and 9

63. There have been no significant changes with regard to these articles.

Article 10.1

64. The Prison Rules 1984, as amended, continue to provide for the regulation and management of the prison. Updated rules are in the course of preparation.

Article 10.2 and 3

65. Tromode House has been renamed "Cummal Shee" and is now run by the Department of Health and Social Security as an adolescent resource centre. The Custody Act 1995 requires the Department of Home Affairs to keep male prisoners under the age of 21 separate from those aged 21 years or over, so far as practicable. This Act also stipulates that a child or young person shall not receive a custodial sentence or be remanded in custody unless circumstances are so exceptional that it would not be possible to deal with him in any other way. A secure juvenile unit is provided for any child or young person who needs to be remanded or detained in custody.

66. The power to impose a sentence of borstal training was revoked in the Isle of Man by the Prison and Youth Custody Act 1986 and replaced by a power to impose a sentence of youth custody, which is served on the island.

Article 11

67. There have been no significant changes with regard to this article.

Article 12

68. Since the submission of the fourth periodic report, Immigration Appeals (Procedure) Rules made under the provisions of the Immigration Act 1971 were adopted in the Isle of Man on 1 April 1997. The effect of these rules was to provide that appeals against certain decisions made in relation to persons refused leave to enter the Isle of Man, were dealt with in a manner entirely consistent with equivalent procedures in the United Kingdom.

Articles 13 to 19

69. There have been no significant changes with regard to these articles.

Article 20

70. There have been no significant changes with regard to this article, but see above in respect of racial discrimination.

Article 21

71. There have been no significant changes with regard to this article.

Article 22

72. Since the submission of the previous report the Employment (Amendment) Act (1996) has made it unlawful to refuse employment on grounds related to trade union membership.

Articles 23 to 27

73. There have been no significant changes with regard to these articles.

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